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22 FEB 1994

FITCH, EVEN, TABIN & FLANNERY
135 South LaSalle Street, Suite 900
Chicago, Illinois 60603-4277

In re Application of
HARPOLD et al
Serial No.: 07/938,154
PCT No.: PCT/US91/02311
Int. Filing Date: 03 April 1991
Priority Date: 03 April 1990
For: HUMAN NEURONAL NICOTINIC
ACETYLCHOLINE RECEPTOR
COMPOSITIONS AND METHODS
EMPLOYING SAME

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DECISION ON
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PETITION
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UNDER 37 CFR 1.181
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This is in response to applicant's "Petition for Revival of an Application for Patent Unavoidably Abandoned Under 37 C.F.R. 1.137(a)" filed 09 August 1993 which is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 03 April 1991, applicant filed international application PCT/US91/02311, which claimed priority of an earlier U.S. application filed 03 April 1990. A Demand for international preliminary examination, in which the United States was elected, was timely filed on 31 October 1991. Accordingly, the thirty-two month period for entering the national stage in the United States expired at midnight on 03 December 1992.

On 30 November 1992, applicant completed all the requirements under 35 U.S.C. 371 for entry into the national stage in the United States.

On 21 June 1993, the United States Designated/Elected Office mailed a Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903). The notification indicated an international filing date of 03 April 1991 and a 35 U.S.C. 371 and 102(e) date of 30 November 1992.

On 16 July 1993, Application Processing Division mailed A NOTICE OF INCOMPLETE APPLICATION (Form PTO-1123) indicating that Figure 9 was needed, a NOTICE TO FILE MISSING PARTS OF APPLICATION -- NO FILING DATE (Form PTO-1532) indicating that the

oath or declaration did not cover items required on the Notice of Incomplete Application and the application did not comply with the Sequence Rules, and NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURE.

On 22 October 1993, applicant filed an amendment to the specification which contains the sequence listing and a Computer Readable Form (CRF) of the Sequence Listing.

COMPLETENESS OF DRAWINGS

The Receiving Office notified applicants in the INVITATION TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION mailed 06 May 1991 that the drawings were improper and that new sheet of drawings were required. On 06 June 1991, applicant filed replacement sheets with the United States Receiving Office. The replacement sheets were accepted by the United States Receiving Office and made an official part of the international application. Therefore, the international application is complete. Applicant has fully complied with 37 U.S.C. 371, and the specification and drawings of the international application are acceptable for entry into the national stage in the United States. Accordingly, the NOTICE OF INCOMPLETE APPLICATION (form PTO-1123) and NOTICE TO FILE MISSING PARTS OF APPLICATION -- NO FILING DATE (form PTO-1532) erroneously mailed out by Application Processing Division are VACATED.

POWER OF ATTORNEY

It is noted that the Mr. William T. Comer, President and Chief Executive Officer, The Salk Institute Biotechnology/Industrial Associates, Inc, purporting to be the assignee of the present invention has filed a change in the Power of Attorney. It is noted that an assignment has not been recorded in the present application. For the assignee to take action in an application, the assignee must establish the right to take action as set forth in 37 CFR 3.73(b). See MPEP § 324. Therefore, this decision is being mailed to Fitch, Even, Tabin & Flannery, the law office of the attorneys of record.

CONCLUSION

This application will be given an international filing date of 03 April 1991 under 35 U.S.C. 363 and a date of 30 November 1992 under 35 U.S.C. 371(c) and 102(e).

This application will be forwarded to Application Processing

Division for processing including consideration of the Sequence Listing and the Computer Readable Form (CRF) of the Sequence Listing filed on 22 October 1993.



Leonard E. Smith
Legal Examiner
International Division



Conferee: Charles A. Pearson
Administrator
International Division